S. Bij 4/53

1953 File No.

K

Legal DEPARTMENT
Examiner F. BRANCH

Subject:— Suits — Bijapur

C. S. No. 22 of 1952

L. S. Deshpande ------ Plff

v/s

The State of Bombay
and another ---- Defts.

Re: For a declaration that the clause about the inalienability of the suit land without the permission of the Collector was added unauthorisedly and in excess of the terms and conditions contained in the Collectors order, and the order of the Collector and Government directing recovery of Rs 50 % of sale price of the suit lands from the plaintiffs is arbitrary.

File No. S Bij. 4/53

Bld. Scott. Ship 24-B

42 (E)

4/53

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In the Court of the Civil Judge, Sr. Division,

B I J A P U R.

Laxman Shriniwas Deshpande.

Brahmin. 42, Agriculture

of Indi. Dist. Bijapur. Plaintiff.

Vs.

1. The State of Bombay.

2. The Collector of Bijapur. Defendants.

Claim for Court fees.) 400
Claim for jurisdiction.)

Herein the plaintiff begs to submit as under:

1/- The plaintiff is the Pargana Watandar of Indi, District Bijapur. He applied to the Collector of Bijapur on 17-7-1950 to have two of his pargana Watan lands viz..

	S.No.	Area.	Assessment.	Village.
1.	198	30-31.	35- 0- 0	Bhuyar.
2.	122	29-35	6- 0- 0	Lingadhalli.

both of Indi Taluka, converted into Rayatwari lands. It was mentioned in that application that these lands were to be sold to the protected tenants of the lands or to the genuine agriculturists in pursuance of the provisions of the Bombay Tenancy and Agricultural lands Act of 1948. This action was contemplated with a view to meet the Grow-More-Food-Campaign started by the Union Government. and supported and implimented by the Provincial Govt. of the Bombay State. After due, careful and mature inquiry, the Collector of Bijapur was pleased to order conversion of the lands as prayed for in the application, by his order No. C.W.L. 94 dated 1-8-1950. That order was duly communicated to the plaintiff in due course.

2/- In pursuance of that order, in the form F(1) as required under

was duly signed by the plaintiff before the Mamlatdar of Indi and it was duly authenticated by the village officers concerned. But a clause about the inalienability of the said lands without the previous consent of the Collector was unauthorisedly added to the agreement embodied in Form F(1) in the margin. The plaintiff signed that agreement in the belief that it was a part of the order of the Collector. As this clause has been added in excess of the terms and condi-tions of the order of the Collector No. C.W.L. 94 dated 1-8-1950, it is null and void and not binding upon the plaintiff. In pursuance of the order of the Collector No. C.W.L. 94 dated 1-8-1950. necessary and requisite entries were made in the record of rights of the respective villages (in village Form VI). When the plaintiff signed the above form, he agreed to the conditions of new and imvartible tenure without occu-pancy price.

3/- Thereupon on 2-9-1950 the plaintiff applied to the Tribunal under the B.T. & A.L.Act 1948 for fixing up the price of the lands in suit. The Tribunal fixed the price on 9-9-1950. Then he applied to the Collector on 11-9-1950 for permission to sell the suit lands being under the impression and belief that he is bound by the clause unauthorisedly added to the agreement embodied in Form F(1) The said application was pending before the Collector of Bijapur for a long time.

At that time, when the application seeking permission to sell the suit lands was presented to the Collector, Govt. Resolution R.D.No. 4119 dated 7-8-1950 had been issued for the guidance of the Collectors in the matter of granting permission to sell. Unfortunately there was a great delay on the part of the Colle-ctor in granting permission and in the meanwhile the Govt. of Bombay was pleased to issue G.R.R.D. No. 4119/49 dated 22-1-51 in amplification of the

G.R.R.D. of the same number dated 7-8-1960. Under the terms of the amplification order, the Collectors were given directions that the permission to sell should be granted subject to the condition that the holder should pay to Govt. 50 P.C. of the sale proceeds minus the occupancy price if any. Thereafter the Collector of Bijapur granted the permission to sell the suit lands on 23-2-1951, provided the plff agreed to pay 50 % of the sale proceeds to the Govt. The plaintiff having refused to accept the condition, the Collector finally refused permission to sell the suit lands on 14-3-1951.

5/- The plaintiff contends that the Collector, having granted permission to convert the lands in suit without imposing the condition that the plaintiff was to pay 50 % of the sale proceeds, had no right to impose that conditions in pursuance of the amplification order of the G.R.R.D.No. 4119/49 dated 22-1-1951 when the plaintiff applied for permission to sell the same. The order of refusal is bad on this ground.

6/- The plff also contends that the clause unauthorisedly added to the agreement embodied in Form F(1) in excess of the terms and conditions of the order of the Collector No. C.W.L. 94 dated 1-8-50 is not binding on him. Even assuming that that clause is binding on the plaintiff, the plaintiff further contends that the Government of Bombay and the Collector acted in excess of their rights under that contract by imposing unreasonable and unconscionable conditions which are expropriatory in their nature and character in pursuance of the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-1951.

7/- As the permission to sell the suit lands was refused by the Collector on 14-3-1951, the pl-

submitted a Memorial or petition to the Government of Bombay on 5-4-1951. But he received a reply dated 12-5-51 No. 8251/49- 39558 B from the Secretary to the Government of Bombay, Revenue Department stating that Govt. see no reason to interfere with the order of the Collector of Bijapur in the matter.

8/- Thereupon, the plaintiff filed an appeal being No. B.R.T. 5680/51 to the Bombay Revenue Tribunal at Bombay against the order of the Government dated 12-5-1951. But the said appeal was summarily dismissed by the Bombay Revenue Tribunal by its order No. 0-1069 of 1951 dated 31st July 1951, holding that it had no jurisdiction.

9/- Thereafter being aggrieved by the order of the Collector dated 14-3-61, that of the Government of Bombay Revenue Department No. 8251/49-39558-B dated 12-5-51 and that of the Bombay Revenue Tribunal No. 0-1069 of 1951 dated 31-7-51 and by the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-1951, the plaintiff preferred an application C.A.No. 1395/51 under Article 226 of the constitution of India to the High Court of Judicature at Bombay on 7-9-1951. But the High Court of Judicature at Bombay refused on 10-12-51 to interfere with the order of the Collector or the Govt. of Bombay under Article 226 of the Constitution of India by a prerogative writ, as in its opinion, the question involved in the Civil application No. 1395/51 is one of interpretation of the contract-_ual rights between the plff and the defendants.

10/- The plaintiff, therefore, is constrained to file this suit for a declaration that the clause requiring the plaintiff to take permission of the Collector for the sale of the suit lands is null and void and not binding upon the plaintiff as it is added in excess of the terms and conditions of the order of the Collector No. C.W.L. 94 dated

11/5

1-8-1950 and that the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-1951, and the order of refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 are ultra vires of the powers of the Collector and the Govt. of Bombay and in the alternative for declaration that demand by the Collector and the Govt. of 50 % of the sale proceeds are expropriatory in their nature and the Collector can only demand a nominal part of the sale price, on consideration of his consent.

11/- [illegible]

11/- The cause of action arose when the Colle refused permission to sell the suit lands i.e. on 14-3-1951 within the jurisdiction of this Court.

12/- The plaintiff is the resident of Indi, a Taluka place within the jurisdiction of this Court, The cause of action arose within the jurisdiction of this Court. Hence this Court has jurisdiction to try this suit.

13/- The Court fees is paid on Rs. 400/- the value set down for the purpose of this suit for the two declarations prayed in para 14 of the plaint. For the purpose of jurisdiction valuation is Rs. 10500/-.

14/- Notice as required by Section 80 of the Civil Procedure Code has been given to the Collector of Bijapur as also to the State of Bombay and delivered to them as required by law.

15/- Plaintiff prays:-

1) For a declaration that the clause in Form F(1) requiring the plaintiff to take the per-

-mission of the Collector for the sale of the suit lands is null and void and not binding on the plff. as it is added unauthorisedly in excess of the terms and conditions of the order of the Collector No. C.W.L. 94 dated 1-8-1950 and that the amplifica--tion order of the G.R.R.D. No. 4119/49 dated 22-1-1951 and the order of refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 in pursuance of the said amplification order are ultravires of the powers of the Collector and the Govt. of Bombay.

2) In the alternative, if it is held that consent of the Collector is necessary for any reasons, it should be declared that that order of the Collector demanding 50% of the sale price is arbitrary and expropriatory in its nature, and that the Collector or the Govt. can only demand a nominal part of the sale price on consideration of the consent.

3) For costs of the suit.

4) Any other equitable relief, the Court finds plaintiff entitled.

Bijapur.
dated, 22) Sd/- x x
1952)

I Laxman Shriniwas Deshpande of Indi, the above-mentioned plaintiff, hereby verify that the contents of paras 1 to 15 of the plaint are true to my knowledge and belief.

Dated _____ 1952. Sd/- x x x x

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Bijapur C.S. No.22 of 1952.

Plaintiff has filed this suit against the State of Bombay and the Collector of Bijapur for a declaration that the clause about the inalienability of the suit land without the permission of the Collector was unauthorised and in excess of the terms and conditions contained in the Collector's order, and the order of the Collector and Govt. directing recovery of 50 % of sale price of the suit lands from the plaintiffs is arbitrary. ~~etc.~~

2. The facts of the case and contentions raised in this suit are identical to the facts and contentions in suit No.21/1952 filed by the plaintiff's brother V.S.Kulkarni regarding other paragana watan lands so converted to ~~khasia~~ Khalsa. An exhaustive brief has been prepared in that suit. Defence of this suit may be sanctioned on the lines of that brief.

MME
22/1/53

Sol (Mtl.) Jr
23/1

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
23-1-1953

*Secretary R.D. Jr
23/1

* No. 1538/E
dd. 23-1-53.

[Received with O.S.P's No. 231 of 6-2-53
Original Letter filed with the Pbs. of Bijapur
C.S. No. 21 of 1952

IN THE COURT OF THE CIVIL JUDGE, SR.DN. 9 4.

AT BIJAPUR.

Special Civil Suit No.22 of 1952.

1. Laxman Shriniwas Deshpande. plff.

Vs.

1. The State of Bombay.
2. The Collector of Bijapur. defts.

Herein the written-statement of defts Nos 1 and 2 is as follows:-

1. The plff submitted an application to the Collector on 17-7-1950 for converting the suit lands to Rayatwari lands. The plaintiff relinquished the lands by giving notice to the Mamlatdar on 27-11-1950 which was to have effect from the close of that year. The plff's statement was recorded on 27-7-1950 and thereby the plff consented to take the lands on new and impartible tenure and in accordance with the conditions in G.R.R.No.4123/45 of 15-7-1948. On 1-8-1950 the Collector in persuance of instructions issued to the Collectos for disposal of such cases in G.R.R.No.9712/28 of 4-5-1939 as modified by G.R.R.D.No.4123/45 of 15-7-1948, passed an order regrantin the said lands to the plff as unalienated ~~unoccupied~~ unoccupied lands on new or restricted and impartible tenure without chargin any occupancy price but subject to the payment of full assissment. When lands were thus regranted on new or restricted tenure the condition of inalienability without the permission of the Collector was essentially and automatically attached to it and thus the form prescribed under Rule 37(4) of the Rules for such agreement is Form F(I) after incorporating therein the said clause. The addition of the clause was thus not unauthorised. It was quite legal and valid. The allegations in Paras 1 of the plaint which are inconsistent with or contrary to what is stated above are denied.

2. The order of the Collector was duly communicated

to the plff The plff signed and executed an agreement as per Rule 37(4) in Form F(I) on 8-8-1950 with the clause in question. The plff voluntarily and willing signed the said agreement after being satisfied that it was in persuance of the Collector's order. The plff consented to the said terms and executed the agreement, and he cannot repudiate the same now. The plff's allegations in Paras 2 and 3 and 6 and 10 of the plaint that the clause was unauthorisedly added to the agreement, that the addition is in excess of the terms and conditions of the order of the Collector and that it is null and void and not binding on the plff are not correct and are denied. The plff is estopped by his conduct from raising any such contention. The plff applied to the Mamlatdar on 24-8-1950 for making Panch valuation of the lands and the Mamlatdar fixed prices on 2-9-1950. The allegations to the contrary in paras 3 and 4 of the plaint are denied.

3. The plff applied on 11-9-50 to the Collector for permission to sell. The enquiry had to be made through the Prant Officer and Mamlatdar and therefore there was no delay When the application for permission was submitted by the plaintiff such cases of permission were governed by G.R.R.D.No.7907/33 III of 26-8-1947 under which the cases were to be submitted to the Government. While granting such permission under the B.R. Government considered several points including the one whether or not it should share the sale price with alienor. The Collector submitted the case to the Government on 19-12-1950. Before the case was disposed of G.R.R.D.No 4119/49 of 22-1-1951 had been issued. In view of this, the Govt. directed the Collector to dispose of the plff's application in accorddance with the above B.R The plff's application could only be disposed of according to the directions of the Govt operative at the date of disposal of the application. The Collector acted in terms

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of this G.R. The Plff ~~referred~~ refused to abide by the condit laid down in the said G.R. with the result the Collect ~~referred~~ refused the permission applied for by the plff.

4. The allegations and contentions of the plff i paras 5 and 6 and 11 of the Plaint are not correct and denied.

5. The transfer of the lands held on new tenure by the plff could not according to the terms of the agreement be made save with the consent or permission o the Collector which could be granted by the Collector by virtue of terms and conditions of the grant itself. In granting the consent or pemmission the Collector is bound by the instructions issued by the Govt. It was qui lawful for Govt. to impose such conditions as are laid in G.R.R.D.No.4119/49 of 22-1-1951. These conditions are not unreasonable and unconscionable as contended by the Plff. The said conditions are quite legal and proper and it was within the powers of Government and Collector to impose such conditions.

6. The clause in question is not added in excess of the terms and conditions of the order of the Collec The G.R. of 22-1-1951 and the order of ~~the Collector~~ refusal of permission to sell passed by the Collector on 14-3-1951 are not ultravires of the powers of the Collector and of the Govt. The demand of Collector nd of the Govt. The demand of 50% of the sale proceeds is not expropriator nor abbitrary in its nature. The allegations to the contrary as made in Paras 10 and 15 of the Plaint and the allegation therein to the effect that the Collector can only demand less than 50% of the sale price or nominal part of sale price are not correct.

7. The clause in question is legal and valid and is binding on the plff. It was not added unauthorisdly nor in excess of the terms and conditions of the order of the Collector. The G.R. of 22-1-1951 and Collector's order of 14-3-1951 refusing permission are intra vires of the powers

or the Collector and the Government.

8 The plff is not entitled to any of the reliefs prayed for by him.

It is therefore submitted that the plff's suit be dismissed with costs.

District Government Pleader,
Bijapur.

I, A.C.Angadi, District Government Pleader, Bijapur, hereby declare that what is stated in paras 1 to 8 above is true on information received and believed to be true. Signed at Bijapur on _____.

District Government Pleader,
Bijapur.

This W.S. was approved & O.P. informed accordingly vide this office memo. No 5428/E of 19-3-1953, which is filed with the Hbs. of O.S. No. 21/1952 Bijapur

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B

No. 4822/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 24 March 1953.

To

The District Government Pleader,
Bijapur.

Subject:- Bijapur Civil Suits Nos.21 and 22 of 1952.
Vyankatesh Shriniwas ... Plaintiff
vs.
1. The State of Bombay and
2. The Collector of Bijapur. Defendants.

Sir,

With reference to your letter No.232 dated the 6th February 1953 to the Collector of Bijapur and copy endorsed to this office under your No.233 dated 6-2-53, I have the honour to state as follows:-

The Government resolution referred to in para 1 of your letter may be obtained from the Collector. The agreement in Form F(I) executed by Shri V.S. Deshpande may be obtained from the Mamlatdar of Bijapur taluka.

As regards para. 3 of your letter it may be explained that the condition of personal cultivation is necessarily involved when the land is held under the new tenure. The land held under such tenure is inalienable. It would, therefore, follow that it cannot be let out to a tenant. A lease is a transfer of the land. If the land is cultivated by any lessee under a lease it would mean that the land has been alienated by the occupant under the new tenure. Therefore if the occupant under the new tenure ceased to cultivate the land personally it would mean that he has alienated the land in favour of a tenant for cultivation. In that case the land can be forfeited for breach of condition under section 79(a) of the Land Revenue Code.

Your attention is also requested to rule 37 clauses (1) to (5) of the Land Revenue Rules. A copy of resolution

No....

No.6881/49 dated the 22nd August 1951 is also sent herewith for your information.

Yours faithfully,

Sd/ S.R. Kaprekar
for Remembrancer of Legal Affairs.

RLS.
11.3.

The above reply is sent to O.I.P with ref. to his letter No. 232 of. 6-2-53
letter No. 232 of 6-2-53 cs.
filed along with the B/S.
of Bijapur C.S. No. 21 of 1952
15/5/53

Suits.
Bijapur.

For a declaration that the clause about the inalienability of the suit land without the permission of the Collector was added unauthorisedly and in excess of the terms and conditions contained in the Collector's order, and the order of the Collector and Government directing recovery of 50% of sale price of the suit lands from the plaintiffs is arbitrary.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 16082/E
Bombay Castle, 30th July 1953.

Letter from the Collector of Bijapur No. LAW-210 dated the 31st July 1952 forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

In the Court of the Civil Judge, (Senior Division), Bijapur.	dated the 31st July 1952 forwarding the papers in the suit noted in the
S/L. Civil Suit No. 22 of 1952.	
L.S. Deshpande..... Plaintiff; vs. The State of Bombay and another.... Defendants.	

Memorandum to the District Government Pleader, Bijapur No. 1631/E, dated the 24th January 1953 forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION: Sanction is accorded to the defence of the suit on the lines of the brief accompanying Government Resolution, Legal Department No. 10515/E, dated the 5th May 1953 in Civil Suit No. 21 of 1952.

By order and in the name of the Governor of Bombay,

Original

R.T. KATARKI,
Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur.

HSP/4/7

Subd. for sign.
29/7/53
Supdt. 29/7/53
D. S. (Civil)

Submitted after issue
File S···Bijapur/53
(New).

SPW
31.7.53

Supdt. NB
1.8.53.

S. Byapur.

1965

Received On :- 2-6-1952.

Registered on :- 7-6-1952.

Decided on :- 23-10-1953.

	Y	M	D.
Duration	1	4	16.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION)

AT BIJAPUR.

SPECIAL CIVIL SUIT NO. 22 OF 1952.

Pleaders :-

Shri. A.B. Kankanwadi.

Laxman Shriniwas Deshpande of Indi.

Plaintiff.

against

1. The State of Bombay.
2. The Collector of Bijapur.

Shri. A.C. Nagadi.

Defendants.

Claim Rs. 400/- for Court fees.

Claim Rs.10,500/- for jurisdiction.

The plaintiff sues for a declaration that the Clause in form F(1) requiring the plaintiff to take permission of the Collector for the sale of the suit lands is null and void and not binding on the plaintiff as it is added unauthorisedly in excess of the term and conditions of the order of the Collector, dated 1-8-50 and that the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-1951 and the order of the refusal

of permission to sell the lands in suit passed by the Collector of Bijapur on 14-2-1951 in pursuance of the said amplification order are untra-vires of the powers of the Collector and the Government. In the alternative he sues for a declaration that the order of the Collector demanding 50 per cent of the sale price is arbitrary and ex-proprietory in its nature and that only a nominal part of the sale price would be reasonable in consideration of the consent of the Collector. He prays for his costs.

2. The plaintiff alleges that he is a Paragana Watandar and that he applied to the Collector of Bijapur on 17-7-1950 to have the lands mentioned in para 1 of the plaint converted into Rayatwari lands. He says that the Collector of Bijapur was pleased to order conversion of those lands on 1-8-1950. He says further that in pursuance of that order an agreement in the form F(1) under the Land Revenue Code was duly signed by the plaintiff and a clause about the inalienability was unauthorisedly added to the agreement deed in the margin by the Mamlatdar unauthorisedly without taking the consent of the Collector. He says that the plaintiff signed that agreement deed in the belief that the Collector had made such an order. But it had not been done so by the Collector in his order of 1-8-1950. He states that he agreed only to the condition of new and impartible tenure without occupancy price and not to the condition stated in the margine. He says that he applied to the Collector on 11-9-1950 for permission to sell the suit lands under the impression that he was bound by the clause, unauthorisedly added to the aggeement, but the said application had been presented

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under G.R.No. 4123/45. He alleges further that his application remained pending for a long time and in the meanwhile G.R.No.4119/49, dated 7-8-1950 and its amplification dated 22-1-1951 came into force and that the Collector demanded 50 per cent of the sale price for the required permission. The plaintiff refused to do so and the Collector therefore did not grant permission to sell the lands on 14-3-1951. He contends that the Collector had no power to demand 50 per cent of the sale price for granting the permission by applying G.R.No. 4119/49 and that the order of refusal to grant permission was bad in law. He states that the condition, laid down in the margin of the agreement deed was not binding on him. He, in the alternative, alleges that the Government of Bombay and the Collector acted in excess of their rights under the contract by imposing unreasonable and unconscionable conditions which are expropriatory in their nature and character. He states that he submitted a memoran-dum to the Government, but received the reply from it against the plaintiff. Then he appealed to the Revenue Tribunal, but got no success there also ; and ultimately he approached the High Court under article 226 of the Constitution of India, but the latter refused to interfere with the order of the Collector or the Government. Hence, the suit.

3. The defendants in their written statement at Exh. 15 stated that the plaintiff first applied to the Collector on 3-11-1948 for converting the suit lands to Khalasa ones and that the Mamlatdar recorded the plaintiff's statement. The Collector passed an order regranting the said lands to the plaintiff as unalienated unoccupied lands on new or restricted and impartible tenure without charging

any occupancy price but subject to the payment of full assessment. When lands were thus regranted on new or restricted tenure the condition of unalienability without the permission of the Collector was essentially and automatically attached to it and thus the form prescribed under Rule 37 (3 and 4) of the Rules for such agreement was form F(4) after incorporating the said clause. The condition of the clause was not thus unauthorised, but quite legal and valid. They stated that the plaintiff voluntarily and willingly signed the said agreement after satisfying himself that it was in pursuance of the Collector's order and that he consented to the said terms and executed the agreement. Thus the said agreement was not null and void, but was binding on the plaintiff. They further stated that the plaintiff applied for permission on 11-9-1950 and time was spent in holding the inquiry in respect of the lands in suit. The Collector submitted the case to the Government on 31-11-1950. Before the case was disposed of G.R.R.D. No. 4119/49 had been issued and the Government ditected the Collector to dispose of the plaintiff's application in accordance with the above G.R.. They stated that plaintiff's application could only be disposed of according to the direction of the Government and the Collector was perfectly justified in following these directions of the G.R. which was prevailing at the time of passing the order. They stated that the conditions, laid down by the Collector in his order were not unreasonable and unconscionable, but they were quite legal and proper to impose such conditions. They denied the allegations that the clause in question was not added in excess of the terms and conditions of the order of the Collector. They stated that the order of the Collector refusing permission to sell the lands were not ultra vires and that demand of 50 per cent of the sale price was

21/69

expropriatory or arbitrary in its nature. They prayed for their costs.

4. The following issues are framed at Exh. 33.:-

-:ISSUES:-

(1) Whether the plaintiff proves that he signed the agreement form F(1) through mistake thinking that the contents of the written clause might be existing in the order of the Collector ?

(2) Whether the plaintiff proves that inclusion of the said clause in the agreement form was unauthorised and void in view of the order of the Collector, passed previously in this respect ?

(3) Whether the plaintiff in the alternative proves that the Collector has no right to demand 50 per cent of the sale price and that it is not binding on the plaintiff ?

(4) Whether the defendant proves that the plaintiff is estopped from filing the present suit ?

(5) Whether the plaintiff is entitled to the declarations claimed ?

(6) What decree ?

5. My findings on

Issue No. 1:- No.

Issue No. 2:- No.

Issue No. 3:- 1st part:- No. 2nd part:- Does not survive.

Issue No. 4:- Not pressed.

Issue No. 5:- No.

Issue No. 6:- As per final order.

R E A S O NS.

This suit and Suit No. 21 of 1952 were heard

heard together as companion suits. No oral evidence was led in this suit also . In this suit, the application for permission. the statement of the plaintiff and his brother and the notice of the relinquishment are exhibited as Exhs. 47,45 and 46. The agreement deeds are Exhs. 35 and 36 and the relinquishment regranting order is Exh. 37. The application for granting permission to sell the lands is Exh. 38, and the refusal to grant permission to sell the lands is Exh. 41, and the reply from the Government to the plaintiff's memorandum is Exh. 31. Exh. 32 is the copy of the order, passed by the High Court below the application, submitted by the plaintiff under article 226 of the Constitution of India. The order of the Revenue Tribunal is Exh. 25. In this suit these exhibits should be read as the relevant exhibits referring to the documents, mentioned in Spl. Suit No. 21 of 1952, in place of those exhibits referred in that suit.

7. For the reasons, given in the companion Suit No. 21 of 1952, I record my findings on these issues also accordingly and pass the following order :-.

ORDER.

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendants Nos. 1 and 2(in one set) and bear his own.

Sd/-M.H.Kazi.

23rd October 1953. CIVIL JUDGE(SR.DN.)

(Reed. with 25 P's No. 1411 Dt. 12-11-53)

Decree.

In the Court of the Civil Judge, Sr. Dn, Bijapur.
Special Civil Suit No. 22 of 1952.
Lakxman Shriniwas Deshpande, Brahmin, 42,
Agriculture of Indi, Dist. Bijapur. ..... Plaintiff.

Vs.

1. The State of Bombay.
2. The Collector of Bijapur. .... Defendants.

Claim for Court fees, 400-0-0.

Claim for jurisdiction, 10500-0-0.

Suit filed on, 2-6-1952.

Suit registered on, 7-6-1952.

Herein t e plaintiff begs to submit as under :-

1-. The plaintiff is the Pargana Watandar of Indi, Dist, Bijapur. He applied to the Collector of Bijapur on 17-7-1950 to have two of his pargana Watan lands viz.

	S.No.	Area.	Assessment.	Village.
1.	198	30-31.	35-0-0.	Bhuyar.
2.	122	29-35.	6-0-0.	Lingadhalli

both of Indi taluka, converted in to Rayatwari lands.
It was mentioned in that application that these lands were to be sold to the protected tenants of the lands or to the genuine agriculturists in pursuance of the provisions of the Bombay Tenancy and Agricultural lands Act of 1948. This action was - contemplated with a view to meet the Grow -more-Food campaign started by the Union Government, and supported and implimented by the Provincial Govt. of the Bombay State. After due, careful and nature inquiry the Collector of Bijapur was pleased to order conversion of the lands as prayed for in the application, by his order No.C.W.L.94 dated 1-8-1950. That order was duly communicated to the plaintiff in due course.

2. In purguance of that order, an agreement in the Form F(1) as required under the Land Revenue Code was duly signed by the plaintiff before the Mamlatdar of Indi and it was duly authenticated by the village officers xxxx concerened. But a clause about the inalienability of the said lands without the previous consent of the Collector was unauthorisedly added to

a xxx agreement embodied in Form F (1)in the margin.The plaintiff signed that agreement in the belief that it was a part of the order of the Collector.As this clause has been added in excess of the terms and conditions of the order of the Collector No.C.W.L.94 date 1-8-1950,it was null and void and not binding upon the plaintiff. In pursuance of that order of th Collector No.C.W.L.94 dated 1-8-1950,necessary and requisite entries were made in the record of rights of the respective villages (in village Forms VI).When the plaintiff signed the abive form, he agreed to the conditions of new and impartible tenure without occupancy price.

3. Thereupon on 2-9-1950 the plaintiff applied to the Tribunal under the XX B.T.& A.L.Act 1948 for fixing up the price on xxxxxx of the lands in suit.The Tribunal fixed the price on 9-9-1950. Then he applied to the Collector on 11-9-1950 for permission to sell the suit lands being under the impression and belief that he is bound by the clause unauthorisedly added to the agreement embodied in Form F (1).The said application was pending before the Collector of Bijapur for a long time.

4. At that time,when the application seeking permission to sell the suit lands was presented to the Collector,Govt.Resolution R.D.No.4119 dated 7-8-1950 had been issued for the guidance of the Collectors in the matter of granting permission to sell. Unfortunately there was a great delay on the part of the Collector in granting permission and in the meanwhile the Govt.of Bombay was pleased to issue G.R.R.D.No.4119/49 dated 22-1-51 in amplication application of the G.R.R.D. of the same number dated 7-8-1950. Under the terms of the implication order, the Collectors were given directions that the permission to sell should be granted subject to the condition that the holder should pay to Govt. 50 P.C. of the sale proceeds minus the occupancy price if any. There after the Collector of Bijapur granted permission to sell the suit lands on 23-2-1951 provided the plff agreed to pay 50 % of the sale proceeds to the Govt.The plaintiff having refused to accept the condition,the Collector finally refused permission to sell the suit lands on 14-3-1951.

5. Thecpal The plff contends that the Collector having granted permission to convert the lands in suit without imposing the condition that the plaintiff wasto pay 50 % of thesale proceeds

had no right to impose these conditions in pursuance of the amplication order of the G.R.R.D. No.4119/49 dated 22-1-1951 when the plaintiff applied for permission to sell the same. The order of refusal is bad on this ground.

6. The plff also contends that the clause unauthorisedly added to the agreement embodied in Form F(1) in excess of the terms and conditions of the order of the Collector No.C.W.L. 94 dated 1-8-1950 is not binding on him. Even assuming that the clause is not binding on the plaintiff, the plaintiff further contends that the Government of Bombay and the Collector acted in excess of their rights under that contract by imposing unreasonable and unconscionable conditions which are expropriatory in their nature and character in pursuance of the implification order of the G.R.R.D. No.4119/49 dated 22-1-51.

7. As the permission to sell the suit lands were refused by the Collector on 14-3-1951, the plff submitted a Memorial or petition to the Government of Bombay on 5-4- 1951. But he received a reply dated 12-5-51 No.8251/49- 3955B from the Secretary to the Government of Bombay, Revenue Department stating that Govt. see no reason to interfere with the order of the Collector of Bijapur in the matter.

8. Thereupon, the plff filed an appeal being No.B.R.T.5630/51 to the Bombay Revenue Tribunal at Bombay against the order of the Government dated 12-5-1951. But the said appeal was summarily dismissed by the Bombay Revenue Tribunal by its order No.O-1069 of 1951 dated 31st July 1951, holding that it had no jurisdiction.

9. Thereafter being aggrieved by the order of the Collector dated 14-3-1951, that the of the Government of Bombay Revenue Department No.8251/49 3955B dated 12-5-1951 and that of the Bombay Revenue Tribunal No.O-1069 of 1951 dated 31-7-1951 and by the amplification order of the G.R.R.D. No. 4119/49 dated 22-1-1951, the plff prefered an application C.A.No.1395/51 under Article 226 of the constitution of India to the High Court of Judicature at Bombay on 7-9-1951. But the High Court of Judicature at Bombay refused on 10-12-1951 to interfere with the order of the Collector or the Govt. of Bombay under Article 226 of the Constitution of India by a prerogative writ, as in its opinion the questions involved in the Civil -

application No. 1395/51 is one of the interpretation of the contractual rights between th plff and the defendants.

10. The plaintiff, therefore, is constrained to file this suit for a declaration that the clause requiring the plff to take permission of the Collector for the sale of the suit lands is null and void and not binding on the plff as it is added in excess of the terms and conditions of that order of the Collector No.C.W.L.94 dated 1-8-1950 and that the amplification order of the G.R.R.D. No.4119/49 dated 22-1-1951, and the order of refusal of permission to sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 are ultravires of the powers of the Collector and the Govt. of Bombay and in the alternative for declaration that demand by the Collector and he Govt. of 50 % of thesale of proceeds are expropriatory in their nature and the Colector can only demand a normal part of the sale price on consideration of his consent.

11. The cause of action arose when the Collector refused permission to sell the suit lands i.e. on 14-3-1951 within the jurisdiction of this Court.

12. The plff is the resident of Indi a taluka place within the jurisdiction of this Court.

The cause of action arose within the jurisdiction of this Court Hence this Court has jurisdiction to try this suit.

13. The Court fee is paid on Rs.400/-the value of set down for he purpose of this suit or for two declarations prayed in para 14 of the plaint. For the purpose of jurisdiction the value is Rs. 10500/-.

14- . Notice as required by section 80 of the Civil procedure Code has been given to the Collector of Bijapur as also to the State of Bombay and delivered to them as required by law.

15. Plaintiff prays :-

1. For a declaration that the clause in Form F(1) requiring the plff to take the permission of the Collector for the sale of the suit lands is null and void and not binding on the plff as it is added unauthorisedly inexcess of the terms and conditions of the order of the Collector No.C.W.L-. 94 dated 1-8-1950 and that amplification order of the G.R.R.D. No.4119/49 dated 22-1-51 and the order of refusal of permission to

sell the lands in suit passed by the Collector of Bijapur on 14-3-1951 in pursuance of the said amplification order are ultravires of the powers of the Collecotr and the Govt of Bombay.

2. In the ~~ex~~ alternative if it is held that consent of the Collector is necessary for any reason, it should be declared that that order of the Collector demanding 50 % of the sale price is arbitrary and expropriatory in its nature, and that the Collector or the Govt. can only demand a nominal part of the sale price on consideration of the consent.

3. For the costs of the suit.

4. Any other equitable relief the Court finds plaintiff - entitled.

This suit coming for final disposal before Shri M.H.Kazi Civil Judge, S.D, this 23 d day of October 1953, in the presence of Shri A.D.Kankanwadi pleader for the plff and shri A.C.Angadi pleader for the defts, and it is ordered :-

Plaintiff's suit stands dismissed.

The plff do pay the costs of the defendants 1 and 2 in the sot and bear his own.

Bill of costs.

For plf.		For defts.	
1.Stamps for plaint.	37-8-0.	1.For applications, Exhs, 9-10, 11,12,13,14,23,37,44.	5-0-0.
2. " for vakalatnama	0-10-0.	2. Pleader's fee	368-12-0.
3.Applications Exhs., 17-41.	1-4-0.	Total	373-12-0.
4.Pleaders fee.	368-12-0.	Costs disallowed on exhs, 9,10,11,12,13,14,23,37, and 44.	5-0-0.
5.Process fee.	12-8-0.	Total	368-12-0.
Total	420-10-0.		
Costs disallowed on exhs,17,41,.....	1-4 -0.		
Total	419-6-0.		

Given under my hand and the seal of the Court this 23rd day of October 1953.

Sd. M.H.Kazi

Civil Judge, S.D., Bijapur.

Clerk.
Pleader for plff.
Pleader for defts.

Suits.
Bijapur.
For a declaration that the clause about the inalienability of the suit land without the permission of the Collector was added unauthorisedly and in excess of the terms and conditions contained in the Collector's order, and the order of the Collector and Government directing recovery of 50% of sale price of the suit lands from the plaintiffs is ~~ar~~ arbitrary.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No.1348-E
Bombay Castle 20th January, 1954.

Read Government Resolution, Legal Department No. 16082/E, dated the 30-7-1953.

Letter from the District Government Pleader, Bijapur No. 1417 dated the 23-10-1953, stating that the suit noted in the margin was decided by the Civil Judge, (S.D.) Bijapur on the 23-10-1953

In the Court of the Civil Judge, (Senior Division), Bijapur.	:
~~Special Civil Suit No. 22 of 1952.~~	:
Special civil Suit No. 22 of 1952.	:
L.S. Deshpande ..... Plaintiff.	:
V/s	:
The State of Bombay and another. ... Defendants.	:

when the following order was passed:-

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendants Nos. 1 and 2 (in one set) and bear his own

Letter from the District Government Pleader, Bijapur No. 1428, dated the 26-10-1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order and in the name of the Governor of Bombay.

R T Katarki

Original (R.T. Katarki)
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

KGK.
18/12

Submitted for signature
19/1
S.S. (Pol)
19/1
DGS (Civil)

Sarkar after issue
Title in S. Bijapur 4/53

21/1/54
S. S. Patil

S. Bijapur 4/53
22.1.54

4537

No. L.A.W. 210.

8/27

Bijapur 20-1-1954

The Remembrancer of Legal Affiars,
Bombay.

Subject:- Civil Appeal No.606 of 1953
in the High Court of Bombay.
Laxman Shriniwas Deshpande of Indi

Vs.

1. The State of Bombay.
2. The Collector of Bijapur.

Sir,

The appellant had filed a special Civil Suit No.22/1952 in the Court of the Civil Judge Senior Dn., Bijapur. The defence of the suit was sanctioned by Govt. as per G.R.R.D.No.16082/E dated 30-7-1952. The District Government Pleader Bijapur conducted the defence of the suit and the Plaintiff's suit was dismissed with cost. Hence he has preferred this appeal to the High Court. The notice of the appeal is served upon me and it is -- enclosed.

2243
25/1/52
E

2. The appeal in question is to be defended on the favourable grounds in the judgment of the lower court. I, therefore, request you to move Government to sanction the defence of the appeal.

3. The Government Pleader in the High Court may please be instructed to appear and defend the appeal in time.

For Collector, Bijapur.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY. 33 93

FIRST APPEAL NO.606 OF 1953.

Laxman - Shriniwas Deshpande of Indi. ... Appellant.
(Orig.Plaintiff.

Versus.

1. The State of Bombay.
2. The Collector of Bijapur. ... ... Respondents.
(Orig. defendants.)

Claim Rs.400/- for Court Fees.
" Rs.10600/- for Jurisdiction.

The Appellant above-named begs to appeal against the decree of the Civil Judge, Senior Division, in Special Civil Suit No.82 of 1952, dated the 23rd October 1953 on the following among other grounds:-

(1). The decision of the Lower Court is contrary to law and against the weight of evidence in the case.

(2). The Lower Court erred in dismissing the plaintiff's suit with costs.

(3) I It should have been held that the plaintiff had proved that he signed the agreement form (F(1) through mistake thinking the contents of the written clause therein might be existing in th order of the Collector.

(4) It should have been held that the plaintiff had proved that the inclusion of the said written clause in the said agreement form was unauthorised and void in view of the order of the Collect passed preveiously in that connection.

(5). It should have been held that the said clause was insert in excess of the terms and conditions of the order of the Collect in that behalf.

(6). It should have been held that the clause with respect to inalienability was added unauthorisedly by the Mamlatdar in the ma -gin of the agreement without taking the previous consent of the Collector.

(7). The provisions of Rule 74(3) and Rule 37(3) and (4) of the Land Revenue Rule 1929, have been misconstrued and their effe on the plaintiff's case has been misconceived by the Lower Court.

(8). The very fact that form I(1) is prescribed when the land granted both on impartible and inalienable tenure, and the Form used in the

Form used in the present case was Form F(1) which relates only to impartible tenure and the clause of inalienability is added to it in handsubsequently, showed that the said addition is unauthorised.

(9). If the Collector's orders were that the land was granted both under impartible and inalienable tenure th form I(L) prescribed for such a case would have been used.

(10). It ought to have been held that there was no basis for holding that "new" tenure meant restricted or inalienable tenure.

(11). It was an error to proceed on the assumption that as there was no law or rule to explain the word "new tenure" and therefore the additional clause was in corperated in the margin by way of explanation in the agreement deed.

(12). If "new tenure" meant inalienable and the grant was under a "new and impartible tenure" the Form I(L) was the proper form and there was no need to improvise the present form of agreement.

(13). It should have been held that the explanation for the insertion of the additional clause is an after thought to justify the unauthorised action.

(14). It should have been held that in the absence of any authority the term "new tenure" was used only in contradiction to the "old tenure" and nothing more.

(15). If what was meant by "new tenure" was that the lands were inalienable, there was no need to use such an ambiguous expression as that when the more commonly know and accepted term "inalienable" itself was available.

(16). It ought to have been held that the plaintiff had entered into the agreement under a misconception that the terms therein were inserted in the order of the Collector and that the order of the Collector did not include a condition against inalienability and that therefore the plaintiff was not bound by it.

(17). It should have been held that the Collector's order refusing to give permission to the plaintiff to sell the lands was ultra vires.

(18). Even assuming that the plaintiff had consented to the term of inalienability, it ought to have been held that he had done so on the understanding that he was doing it subject to the policy of the Government as set out in the various Government Resolutions which were in force then and that therefore, the plaintiff could not have been subjected

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subjected to the implications of the said condition against alien-
-tion to an extent which was more disadvantageous than it was when
he entered into the agreement.

(19). It was an error to hold that the Government Resolution then in existence said nothing about the conditions on which the permission to sell could be given.

(20). The discretion having been given to the Collector it was wrong ~~t~~ on his part to have refused to use it himself or to have surrendered the same to the Government. The Collector's orders in pursuance of the G.R. are therefore ultra vires.

(21). It was clearly an error ~~t~~ on the part of the Lower Court to have held that the Collector's order passed in accordance with the Government Resolution was an order passed by the Collector in his own discretion.

(22). The application of the plaintiff for permission to sell the lands having been preferred along before the passing of the Government Resolution in question, it was wrong to have applied to the application of the Government Resolution passed subsequent-ly.

(23). The Collector was wrong in delaying the permission till after the passing of the Government Resolution of 1961.

(24). It was no fault of the plaintiff that the Revenue Auth-
-rities had taken an inordinately a long period of time in ~~-~~ deciding the plaintiff's application. The Plaintiff could not have been made to suffer for the inaction or slowness of the Revenue Authorities.

(25). The plaintiff having applied for permission on 11-9-1960, the application should have been decided on the footing of the conditions then existing.

(26). It should have been held that the plaintiff having specifically mentioned in the application for conversion of the Inam lands into Raitava lands that he wanted to convert them in order to sell them, and the Collector having granted such permi-
-ssion once and converted them into new and impartible tenure without demanding any occupancy price, it was not open to the Collector to demand 50% or any portion of the sale price before giving permission to sell.

(27). It should have been held that the condition imposed for granting permission to sell demanding 50% of the sale price was unreasonably, improper, unconscionable and exproprietory.

(28). It should have been held that in as much as the Government themselves had by their G.R.No.2451/49-IV dated 18th August 1953 sunsequently brought this Nazarana in similar cases to 20 times the assessment the demand of 50% of the sale price in 1951 was on the face of it unreasonable, unconscionable and expropriate.

(29). It ought to have been held that the Collector and the Government of Bombay had acted in excess of their rights under the contract by imposing unreasonable conditions which were expropriatory in their future and character.

(30). It was an error to hodlthat the Civil Court had no jurisdictio or power to declare the conditions unreasonable and unconcionable.

(31). It was quite within the power of the Civil Court to relieve the plaintiff from the burden of this unreasonable and unconcionable condition.

(32). In any case, the Lower Court should have directed the Government to apply to the present case the principle and the spirit underlying the G.R. of 1953.

(33). Proper and necessary issues were not raised and correct and legal inferences have not been drawn from proved facts.

(34). The appreciation of law bearing upon the question is faulty and the same has been misapplied to the facts of the case.

(35). The documents and pleadings have been misconstrued.

(36). The declaration prayed for ought to have been granted.

(37). The order as to costs is wrong.

Bombay,
2/12/1953.

Sd/- N.M.Shanbhag.
ADVOCATE FOR THE APPELLANT.

P/-

37 97

Suits.
Bijapur.
For a declaration that the clause about the inalienability of the suit land without the permission of the Collector was added unauthorisedly and in excess of the terms and conditions contained in the Collector's order, and the order of the Collector and Government directing recovery of 50% of sale price of the suit lands from the plaintiffs is arbitrary.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2575-E
Bombay Castle, 5th February 1954.

Read Government Resolution, Legal Department No.16082/E dated the 30th July 1953, the endorsement from the Government Pleader, High Court, Bombay No.656 dated the 23rd January 1954 requesting Government's sanction to the defence of the First Appeal No.606 of 1953 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge, (Senior Division), Bijapur.	
Spl. Civil Suit No.22 of 1952.	
L.S.Deshpande --- Plaintiff.	
vs.	
The State of Bombay and another. -- Defendants.	

RESOLUTION: Sanction is accorded to the defence of First Appeal No.606 of 1953 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department No.16082/E dated the 30th July 1953 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur dated the 23rd October 1953.

By order and in the name of the
Governor of Bombay,

original R T Katarki
(R.T.KATARKI),
Deputy Secretary to Government.

issued D/s 5/2

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Submitted for signature
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S.S.
Sol (M) 4/2
D.S (Civil)

KYK
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Fila ui S Bijaipur 1/53

dkw
6/2

S S 6/2

To

The Registrar, High Court,
Appellate Side,
Bombay.

Re:- First Appeals No. 605 and606 of 1953
(Suits Nos. 21 and 22 of 1952)

Sir,

The plaintiffs-appellants who are brothers applied to the Government for convertion of the suit paraganas Watan lands into ordinary Raitawa lands and they also applied for permission to sell them either to the protected tenants or to the genuine agriculturiests. Their first prayer was granted and while granting the second prayer viz permission to sell the lands, they ordered that the Appellants should pay 50% of the sale proceeds to Government ~~till the Revenue~~ in case of sale). The A ppellants approached the Government till the Revenue Tribunal but they met with no success. Then they approached this Hon'ble Court under Article 226 of the Constitution but this court refused to interfere.

Thereafter, the appellants filed respectively 2 suits being suits Nos. 21 and 22 of 1952 in the Court of the Civil Judge, Senior Division, Bijapur for a declaration that the order of the Government imposing 50 % of the sale proceeds to Government is bad in law, null and void and prayed for other reliefs. Their suits were dismissed. Appeals preferred therefore are pending in the High Court.

Now on 12-8-1954, the appellants having come to know that sales of such Watan lands on conversion were and are being sold on payment of 20 times the assessment applied to the Collector Bijapur. The Collector instantly ordered and granted permission to sell the suit lands on payment of 20 times the assessment. This therefore supercedes the previous order challenged in the suits under appeals. This order has granted considerable reliefs to the appellants. They therefore are prepared to withdraw the said appeals provided the Government agree to forego their costs both in the suits and appeals. The communication received by the Appellan from the Government (Collector Bijapur) is filed herewih

filed herewith and the translation thereof is also filed.

It is therefore prayed that this note may be placed before the Court next week to enable me to obtain necessary orders.

If the Government do not agree to my proposal re-reforegoing their costs both of the suits and appeals, I shall have to obtain an order for early hearing of the appeals since Government are in a hurry to recover the costs of the suits.

Bombay. Sd/- N,M.Shanbaug.

17-3-1953, Advocate for Appellant.

39 709

(Translation of a communication written in Kanarese)

First Appeals No. 605 and 606 of 1953.

No. L.W.L. 3523 and 2463.

Collector's Office,

Bijapur.

Bijapur, '12-8-1954.

To

Shri Laxman Shriniwas Deshpande

Shri Venktesh Shrinivas Deshpande

(both) of Indi.

Sirs,

Reply to your application dated 12-8-1954.

Government are pleased to inform in accordance with their No. I.N.M. 5254/77556-K of date 31-7-1954, with respect to your lands, under new tenure, viz. S.Nos. 198 S.Nos.27 and 23 (of Bhuyyar), S.No.122 (of Lingadhalli) ..... of (Agarkhod) and S.Nos. 258/2/ 259 and 262 of (Hagthan) and in the matter of granting permission to sell them on payment of 20 times the assessment, in accordance with clause 3 of G.R.R.D.No.7799, dated 29-9-1953 and if therefore you pay the amount equal to that of 20 times the assessment, you ~~will~~ may sell your lands as ordinary raitwari lands. Let this be known.

Yours faithfully,

Sd/- A.P. Ijari.

for Collector Bijapur.

Suits.
Bijapur.

For a declaration that the clause about the inalienability of the suit land without the permission of the Collector was added unauthorisedly and in excess of the terms and conditions contained in the Collector's order, and the order of the Collector and Government directing recovery of 50% of sale price of the suit lands from the plaintiffs is arbitrary.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 2575-E
Bombay Castle, 5th February 1954.

Read Government Resolution, Legal Department No.16082/E dated the 30th July 1953. Endorsement from the Government Pleader, High Court, Bombay No.656 dated the 23rd January 1954 requesting Government's sanction to the defence of the First Appeal No.606 of 1953 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge, (Senior Division), Bijapur.
Spl. Civil Suit No.22 of 1952.
L.S. Deshpande... ... Plaintiff.
Vs.
The State of Bombay and another... ... Defendants.

RESOLUTION: Sanction is accorded to the defence of First Appeal No.606 of 1953 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department No.16082/E dated the 30th July 1953 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur dated the 23rd October 1953.

By order and in the name of the
Governor of Bombay,

Pl. issue
VK
23/3

sd/-
(R.T. KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

No. 6319-E
Legal Department,
Bombay Castle (Bombay No.1), 24th March 1955.

Copy forwarded with compliments to the Government Pleader, High Court, Bombay.

for Deputy Secretary to Government.

TKM/23.3.

Submitted for signature
24/3
23/3 Sol (NC)

Submitted after issue
of Bijapur S Passaport 4/53

24/3

Subdt 24/3/53

S. Bijapur 4/53
24/3/53

Driver

43 133

No. 12913/E
Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Foreshore Road,
Bombay 20th June 1955.

To

The Government Pleader,
High Court, Bombay.

Subject:- First Appeals Nos.605 and 606 of 1953 (From Bijapur Suits Nos. 21 and 22 of 1952).

...

Sir,

With reference to your endorsement No. 5212 dated the 13th June 1955 I have to state as follows:-

2. The ~~applicants~~ appellants in the above two appeals were originally the holders of watan lands. They got the tenure of the lands converted into the new impartible and inalienable tenure in 1949. They then applied for permission to sell the lands. The applications were submitted to Government for orders. When the applications were for decision before Government, G.R.R.D.No.4119/49, dated 22nd January 1951 was in force. Under that Government Resolution permission to sell such lands could be given only subject to the condition that 50% of the sale proceeds should be paid to Government as Nazrana. On 27th January 1951 Government therefore directed that permission should be given to appellants to sell the lands subject to the said condition.

3. The appellants refused to abide by the abovesaid condition and filed the suits (which have given rise to the above appeals) for a declaration that the abovesaid Government Resolution was not applicable to their cases. The suits were decided against them and it was held that in respect of the sales proposed to be made by them, Government had the right to impose the said condition. Being aggrieved by the decision in the suits, they preferred the above appeals to the High Court.

4. During the pendency of the appeals, Government revised its policy regarding grant of permission to sell land held on new impartible tenure. By G.R.R.D. No.7799 dated 29th

September 1953 Government decided as a matter of general policy that in future permission should be granted to sell land held on new impartible tenure on payment of 20 times the amount of assessment as Nazrana. The appellants were not entitled to the benefit of this Government Resolution, as their cases had been decided before the Government Resolution was made. Still at their request, Government agreed, as a matter of mere concession, to extend the benefit of this Government Resolution to them and to permit them to sell their lands on payment of 20 times the amount of assessment. The Collector informed them accordingly.

5. As stated above, it is only as a matter of concession that Government agreed to extend the benefit of G.R.R.D. No. 7799 dated 29th September 1953 to the appellants. Government still maintains that in law the appellants' cases are governed by the former G.R.R.D. No.4119/49 dated 22nd January 1951 whose legality the appellants challenge in these appeals. Government also maintains that the said G.R.R.D. No.4119/49 dated 22nd January 1951 is quite legal and that the trial Court's decision in the suits upholding that Government Resolution is correct. There is therefore no reason why Government should forego their costs of the suits and appeals. Government is not prepared to do so. Having regard to the above facts, in fairness and equity, appellants should pay Government its costs of suits and appeals while withdrawing the appeals.

6. Copies of ~~the above said two~~ Government Resolutions ~~are~~ enclosed herewith for your information.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy to Revenue Department,
Copy forwarded with compliments to the Collector of Bijapur with reference to his letter No. LWL SR-3253 dt. 8.6.53.

cks/20.6.

No. 5494

OFFICE of the
Government Pleader, High Court,
B o m b a y, 23rd June , 1955.

From

Shri A.A.Mandgi,B.A.,LL.B.,
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs,
B o m b a y.

Subject : First Appeal Nos. 605 & 606 of 1953
(From Bijapur Suit Nos. 21 & 22 of 1952).

Sir,

With reference to your letter No.12913/E dated 20th June 1955 on the above subject, I have the honour to inform you that the Court has passed the following order on the 22nd June 1955:-

"To come for hearing in ordinary course.

Yours faithfully,

Government Pleader, High Court

No.

Copy forwarded with compliments to the Collector of Bijapur with reference to his letter No.LWI.SR 3253 dated 22-4-1955 for information.

136 - 406

Submitted for information
file no. S. Bdj. 4/53.

VK
25/6

Sol (MC) Ltr
25/6

S. Bdj 4/53